

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

These amendments provide clarification on terminology for actions taken by participating organizations and individuals within the appeals process. Specifically, a prehearing conference can currently be held informally with the local office and the appellant or more formally with an administrative law judge. When changes were made to the rules in Chapter 7 effective February 1, 2013, all references to the informal version with the local office were inadvertently removed. The February 1, 2013, changes made a prehearing conference more specific to a child abuse or Medicaid provider appeal that is held with an administrative law judge with the Iowa Department of Inspections and Appeals. However, local Department offices can also hold a prehearing conference with an appellant before an appeal hearing is held.

To clarify this concept, the informal version of the conference will now be known as an informal conference. Definitions have been added for both “informal conference” and “prehearing conference” so that the two types of conferences are differentiated. Also, these amendments revise rules to include the information that was inadvertently removed.

These amendments also clarify the date the appeal will be considered received if submitted by an electronic delivery method. As the volume of documents that are submitted electronically continues to grow, it is best to document within the rules how the date received is determined.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0671C** on April 3, 2013.

The Department received comments from one respondent. The respondent commented that in subrule 7.8(4), the proposed amendments state that a prehearing conference shall be held with the appellant, a representative of the Department, and a presiding officer as soon as possible after the appeal has been filed. The respondent asserted that the proposed amendments appear to infer that a prehearing conference would apply to all contested cases before the Department and that all individuals must have a prehearing conference.

Also, the respondent commented on the Department’s current rules regarding motions to intervene for child abuse appeals. In subrule 7.14(2), the Department’s rules indicate that subjects who file a motion to intervene in a child abuse appeal will have the opportunity to appear at the prehearing conference. Any motion to intervene shall be considered by the administrative law judge at the prehearing conference.

The respondent indicated there is a problem with this approach because the person filing the motion to intervene does not have party status at the time of the prehearing conference, so the person does not have the right to participate in discussions or to object to any settlement. The respondent proposed that the Department eliminate the requirement that a motion to intervene be discussed at the prehearing conference.

The Department responded that a prehearing conference can be held informally with the local office and the appellant or more formally with the administrative law judge. As noted above, when changes were made to Chapter 7 effective February 1, 2013, all references to the informal version with the local office were inadvertently removed. The February 1, 2013, changes made a prehearing conference more specific to a child abuse or Medicaid provider appeal that is held with an administrative law judge with the Iowa Department of Inspections and Appeals. However, local DHS offices also can hold a prehearing conference with an appellant before an appeal hearing is held.

With these amendments, the informal version will now be known as an informal conference. Definitions have been added for “informal conference” and for “prehearing conference” so the concepts can be differentiated. The amendments also include the information that was erroneously removed.

As part of the comment review, other state agencies’ rules were reviewed. Each state agency has a rule regarding prehearing conferences and a provision that any party may request a prehearing conference.

Based on this review, the Department has amended the introductory paragraph of subrule 7.8(4) in Item 6 to change the term “shall” to “may.” The introductory paragraph now reads as follows:

**“7.8(4) Prehearing conference.** When requested by the appellant or department, a prehearing conference may be held with the appellant, a representative of the department and a presiding officer as soon as possible after the appeal has been filed. An appellant’s representative shall be allowed to attend and participate in the prehearing conference, unless precluded by federal rule or state statute.”

As the comment relating to informal conferences is not directly related to the changes in this rule making, the Department will take the respondent’s comment under advisement and may amend the relative portion of the rules with a future rule making.

The Council on Human Services adopted these amendments on June 12, 2013.

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 217.6.

These amendments will become effective September 1, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **441—7.1(17A)**:

**“Informal conference”** means a type of meeting between the appellant and the appellant’s representative, unless precluded by federal law or state statute, and a representative of the department. The purpose of the informal conference is to provide information as to the reasons for the intended adverse action, to answer questions, to explain the basis for the adverse action, to provide an opportunity for the appellant to explain the appellant’s action or position, and to provide an opportunity for the appellant to examine the contents of the case record including all documents and records to be used by the department at the hearing in accordance with 441—Chapter 9.

**“Prehearing conference”** means a type of meeting between the appellant and the appellant’s representative, unless precluded by federal law or state statute, a representative of the department and a presiding officer. The purpose of the prehearing conference is to discuss the appealed issue, to inquire as to the potential for voluntary settlement, to establish the hearing date, to establish the location of the hearing including whether the hearing will be by telephone or in person, and to discuss procedural matters relevant to the case.

ITEM 2. Amend subrule 7.5(5) as follows:

**7.5(5) Informal settlements.** The time limit for submitting an appeal is not extended while attempts at informal settlement are in progress. ~~Prehearing conferences are provided for at subrules 7.7(4) and 7.8(4).~~

ITEM 3. Rescind and reserve subrule **7.7(4)**.

ITEM 4. Amend subrule 7.8(2) as follows:

**7.8(2) Filing the appeal.** The appellant shall be encouraged, but not required, to make written appeal on Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, and the worker shall provide any instructions or assistance required in completing the form. When the appellant is unwilling to complete or sign this form, nothing in this rule shall be construed to preclude the right to perfect the appeal, as long as the appeal is in writing (except for food assistance appeals) and has been communicated to the department by the appellant or appellant’s representative.

A written appeal is filed on the date postmarked on the envelope sent to the department, or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency. When an appeal is submitted through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile, the appeal is filed on the date it is submitted. The electronic delivery method shall record the date and time the appeal request was submitted. If there is no date recorded by the electronic delivery method, the date of filing is the date the appeal is stamped received by the agency. Receipt date of all appeals shall be documented by the office where the appeal is received.

ITEM 5. Adopt the following **new** subrule 7.8(3):

**7.8(3) *Informal conference.*** When requested by the appellant, an informal conference with a representative of the department shall be held as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the informal conference, unless precluded by federal rule or state statute.

An informal conference need not be requested for the appellant to have access to the records as provided in subrule 7.13(1) and 441—Chapter 9.

ITEM 6. Amend subrule 7.8(4) as follows:

**7.8(4) *Prehearing conference.*** When requested by the appellant or department, a prehearing conference ~~with a representative of the local office or the office which took the action appealed shall~~ may be held with the appellant, a representative of the department and a presiding officer as soon as possible after the appeal has been filed. An appellant's representative shall be allowed to attend and participate in the prehearing conference, unless precluded by federal rule or state statute.

~~The purpose of the prehearing conference is to discuss the appealed issue, to inquire as to voluntary settlement potential, to establish the hearing date, to establish the location of the hearing including whether the hearing will be by telephone or in person, and to discuss procedural matters relevant to the case.~~

ITEM 7. Amend subrule 7.8(5) as follows:

**7.8(5) *Interference.*** ~~The~~ Neither an informal conference nor a prehearing conference shall not be used to discourage appellants from proceeding with their appeals. The right of appeal shall not be limited or interfered with in any way, even though the person's complaint may be without basis in fact, or because of the person's own misinterpretation of law, agency policy, or methods of implementing policy.

[Filed 6/17/13, effective 9/1/13]

[Published 7/10/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/10/13.